



Office of the Secretary of State

Task Force to Study the Recording of Deeds for Victims of Domestic Violence
Tuesday, February 7, 2017
11 a.m. to 12:30 a.m.
Fred L. Wineland Building, 16 Francis Street, Annapolis, Maryland 21401

Attendees

John Wobensmith, Secretary of State, Task Force Chair

Senator Susan Lee, Sponsor of SB 1047

Anne Hoyer, Director of the Address Confidentiality Program

Josaphine Yuzuik, Assistant Attorney General

Kevin Swanson, Maryland State Archives

Tim Baker, Maryland State Archives

Michael Higgs, Acting Director of the State Department of Assessments and Taxation

Brett Dieck, the Law Office of Brett M. Dieck, LLC and Old Line Title Company, Inc.

James Cosgrove, Maryland Land Title Association

Kathleen Blough, Circuit Court Clerks, Supervisor of Land Records Department

Dorothy Lennig, Attorney at House of Ruth Domestic Violence Legal Clinic

Frederick Smalls, Maryland Municipal League

Matthew Fox, Bankers Association

Michael Lore, Chief of Staff for Senator Lee

Bryan Robb, Corridor Mortgage Group

Brittany Luzader, Address Confidentiality Program

Sarah Smalt, Address Confidentiality Program

Jessica Binenstock, Address Confidentiality Program



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Possibility of an LLC

While waiting for the rest of the task force to arrive, Mr. Higgs mentioned the problem with an LLC (this having been discussed during the last meeting) being that the buyer would lose the Homestead Credit. Ms. Blough agreed adding that for this reason a trust is better, because the beneficiary can receive the credit. Ms. Yuzuik shared her view that the Secretary of State as the trustee is not a viable option. When Ms. Blough suggested the Address Confidentiality Program (ACP) hire a trustee, Ms. Yuzuik explained that with the cost, responsibility, oversight, etc that would really be going beyond the scope of the Secretary of State's role as administrator of the ACP.

Opening Remarks

The Secretary opened the meeting by asking if everyone had received copies of the minutes from the November 1, 2016 meeting. Next, he expressed gratitude for those present and reviewed that at the last meeting, we had divided everyone into four subgroups to further study specific issues related to deed recording. He asked Mr. Dieck, chair of the first subgroup, to begin by sharing what his subgroup discovered.

Revocable Trust Option

Mr. Dieck introduced the members of his subgroup (Mr. Cosgrove, Mr. Baker and Ms. Blough) and explained that drawing on their individual expertise and different experiences, they determined that masking data is an all or nothing proposition meaning that they can either change the whole system of deed recording or adapt the Address Confidentiality Program to the existing deed recording system with no changes. He further explained that they came to this conclusion because if any data is inaccurate in the deed index, there is a concern that the entire index breaks down. Ms. Blough looked into Minnesota's solution, but upon learning that not every county records online in Minnesota, she considered their system to be distinct from Maryland's. Mr. Baker clarified that in Maryland, the historic records are still on paper. If the public image is masked, there is still a digital image copy of the original. When a participant in the ACP graduates from the program, the unmasked information should be put back into the public domain. Mr. Baker stated that the biggest issue is mortgage financing, as hardly anyone pays cash for a house anymore. Mr. Dieck said that in order to maintain the integrity of public recording, their subgroup proposes a revocable trust option (hoping the Secretary of State could be the trustee of a master trust) with the Department of Housing and Community Development as the lender. He explained that trust documents are kept private, and the beneficiary is not stated on the document that is actually recorded in the land records. Ms. Yuzuik asked if the beneficiaries of the revocable trust are actually homeowners. Mr. Dieck explained that they would be considered equitable title owners with the trustee as the legal title owner. They own the property as a trust in name only. ACP participants who purchase a home through the trust option do so as a "trust in name only" and would have all other rights as homeowners, but not the legal title owner, which would be the trustee. Ms. Yuzuik questioned if DHCD could be the lender, but would like them to be contacted to provide their input on this idea. Mr. Lore asked about the way one might discover who is the beneficiary of a revocable trust. Mr. Dieck answered the name of the beneficiary of the trustee (the equitable owner) would only be on the document which would be housed at the Secretary of State or wherever decided to the trustee.



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Shielding Information versus Revocable Trust

Mr. Fox agreed that a trust is always a possibility as long as it is not a master trust. From the mortgage company perspective, there is not much conflict with the way Minnesota's system for deed recording is set up. He reminded that customers already have the right to request that their information not be shared publicly. With the Mortgage Electronic Registration System, which makes it easy for someone to search a name and be provided with the mortgage company information, the address is not shown. He believes the biggest concern to be someone searching for a participant's location via his or her credit report. He suggests making sure that everyone in the ACP freezes his or her credit. He continued to say that while preferred vendors are not a necessity, a preferred title company almost is. He informed that FMA and VA loans allow for individual trust. Mr. Cosgrove clarified that it could not be a master trust. Mr. Dieck answered that it could be a master trust document, but with the names changed. Mr. Baker voiced that if the documents are to be housed at archives, they will need an exception from the Public Information Act. Ms. Yuzuik clarified that State agencies already have an obligation to keep ACP participants name and address confidential. Mr. Dieck said that the deed and mortgage would not go to archives, just the trust. Mr. Swanson added that the deed is recorded with the trust as the owner. Ms. Yuzuik shared a concern that setting up a trust as a solution is too burdensome for the participants. She stated that Minnesota, which also records everything electronically, has a process which is much less burdensome. Ms. Hoyer elaborated that it had been explained to her that in Minnesota, the recording office houses the information, but it is not shared publicly. If a participant defaults on a loan, the recording office must be subpoenaed for the name of the ACP participant. Mr. Fox said the trust will only come into play if we cannot find another way to shield information from recording. Mr. Cosgrove asked what must be done to the mortgage if the deed is signed over from a trust to an individual. Mr. Fox answered that the individual has the responsibility to report to the lender, though this rarely happens in practice. Ms. Yuzuik reminded that once the ACP law is expanded to include private entities, everyone (lenders, title companies, etc) receives the information they need, but are prohibited from making it public information. Ms. Blough wondered if it is too cumbersome for someone doing a title search to come across a property record that has been redacted. Ms. Lennig questioned for whom it is burdensome. Mr. Dieck answered that it is only burdensome for a participant when he or she leaves the ACP. For this reason, it is best to adapt the ACP by adding a homeownership program with a named trustee instead of requiring changes to the recording system already in place. Ms. Yuzuik stated that adding another purpose to the ACP, like assisting victims with home ownership, is a really big undertaking. Ms. Hoyer responded that the ACP is willing to do whatever they can to help victims in any capacity. Ms. Yuzuik clarified that the ACP is the same in Minnesota as it is in Maryland with the exception of their law applying to "any person" and Maryland's still being limited in scope to "State and local agencies." At the moment, their purpose is identical. Is the recommendation from the subgroup to add a home ownership program to the ACP purpose? Ms. Lennig asked Ms. Yuzuik to describe what is done in Minnesota. Ms. Yuzuik explained that they have a grantor/grantee index where the name is listed but the address is not as well as a track index where the name is withheld. Ms. Blough added that in Maryland, we only have the grantor/grantee index system and that in Minnesota they use a restricted document form. Mr. Baker asked if one is scrolling through the grantor/grantee index will one come across a page that is restricted? Mr. Higgs informed that on the State



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Department of Assessment and Taxation's website, a person may only search by address in the real property records. One must come into the SDAT office to search by name. A different address cannot be listed; it must be the actual address. Mr. Cosgrove reviewed the three steps of the recording process: Finance Office; Tax Assessment; and Recording at the Clerk's Office. Mr. Higgs added that all real property is assessed and that recording as they do in Minnesota (including a redacted document in the land records) would create a fairly large technical hurdle. Mr. Fox explained that the FHA allows a trust and requires the owner or occupant to be on the note, not on the deed. Mr. Cosgrove reminded that the note is not recorded, only the deed.

Other Records Created with the Purchase of a Home

Mr. Swanson presented the results from the conversation with his subgroup which was to explore all records created when a home is purchased. He said the list of non-land records is not long and most have already been discussed: utilities, voter registration, etc. Ms. Hoyer explained that the ACP deals with voter registration all the time. Mr. Baker brought up the MVA and Ms. Hoyer responded that all ACP participants must go through the Ombudsman to put 16 Francis Street (the address of the office of the Secretary of State) on his or her license. Mr. Baker asked us to look at the number of people we could expect. Ms. Lennig promised that it is not very many; only 50 people in Minnesota's ACP purchased a home over several years. She mentioned that Minnesota's population is a bit smaller than Maryland's. The Secretary asked how many participants are in Minnesota's ACP. [After the meeting, we learned the answer is over 2,350 participants compared to Maryland's 1,130.] Ms. Hoyer reminded that the director of Minnesota's ACP agrees with her that our first priority ought to be passing legislation that requires private entities to accept the ACP address. Ms. Yuzuik agreed that we cannot require land, title, mortgage companies or anyone to keep anything confidential unless it is the law. So, she asked, do we create an ACP home ownership program? Mr. Cosgrove asked how participants in Minnesota's ACP interact with the deed recording office- is there a code word or something? Ms. Yuzuik replied that there is a notice.

Next Steps

Ms. Hoyer, noting the time, asked for opinions regarding the next meeting's agenda. How do we move forward from here? Were the subgroups helpful? The group generally agreed that they were. Ms. Lennig suggested that each subgroup make a list of the advantages and disadvantages of each proposed option. Ms. Yuzuik narrowed down the options to 1) shielding participant's information as they do in Minnesota and 2) the trust option. Mr. Cosgrove wondered if an LLC would be an acceptable option to shield the name from public view. Mr. Fox responded that an LLC would make it almost impossible for the ACP participants to obtain financing. Mr. Lore clarified that a master trust is a no-go with the FHA and that a revocable trust would be relatively simpler. He also recommends creating a list of preferred vendors.

Ms. Lennig requested a brief summary. Mr. Dieck offered that they are proposing to fit within the confines of the current land records system by creating a revocable trust option in the Address Confidentiality Program. The trustee would be an institution we create. It could be anyone who takes the legal title to the property.



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The equitable title is a separate document. He added that the issue would be that the trustee would have to sign the deed and be at the settlement, even if the participant is no longer in the ACP. Ms. Yuzuik reminded that Minnesota's option adjusts the way records are recorded, providing for the shielding of co-location. Mr. Fox asked why we cannot comply with Minnesota's system. Ms. Lennig suggested that the next discussion focus on the difficulties in adjusting to Minnesota's system vs. creating a trust. The group agreed that this next step made sense. Mr. Swanson's group will merge with Mr. Dieck's group as there did not appear to be a need to identify any other entities.

Closing Remarks

Secretary Wobensmith requested that each subgroup provide a summary of the pros and cons of Minnesota's system versus a trust. He thanked everyone for their presence and participation. The meeting adjourned at approximately 12:30 pm.